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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/664,993	09/18/2000	Gangfeng Cai	2039.006100	4102
37774	7590	02/14/2005	EXAMINER	
WILLIAMS, MORGAN & AMERSON, P.C. 10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042			RAYFORD, SANDRA M	
			ART UNIT	PAPER NUMBER

1772

DATE MAILED: 02/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/664,993

Applicant(s)

CAI ET AL.

Examiner

Sandra M. Nolan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims

1. Claims 1-17 are pending. The current text of the claims appears in the amendment dated 20 November 2003.

Withdrawal of Allowance

2. The allowance of claims 1-17 is withdrawn in order to apply the new ground of rejection below.

Objection Withdrawn

3. The objection to the title is withdrawn.

The new title submitted in the 03 December 2004 response ("the last response") to the 05 October 2004 ("the last office action") is acceptable.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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5. Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,454,965 in view of Ching et al (WO 96/08371).

The '965 patent and the instant application share inventor(s) and an assignee.

The claims of the '965 patent cover multilayer systems in which "at least one" ethylene terephthalate-containing (co)polyester layer (claim 5 of the '965 patent) is used with the oxygen scavenging polymer/transition metal catalyst combinations of applicants' claim 3 (claim 1 of the '965 patent).

The use of systems having the oxygen transmission rates recited in applicants' claim 1 is not claimed in the '965 patent.

Ching teaches packages that employ oxygen scavenging layers on the outside of oxygen barrier layers (page 22, claim 17). The barrier layers contain polyethylene terephthalate (page 3, lines 21-25). The barrier/scavenging layer combinations reduce spoilage of food packaged therein (page 3, lines 26-31).

The '965 patent and the Ching reference are analogous because both teach multilayer systems containing polyester layers and oxygen scavenging layers.

It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the barrier/scavenging layer combinations of Ching in the production of multilayer systems including two or more polyester layers and an oxygen scavenger layer, as taught by the '965 patent, in order to help reduce the spoilage of food packaged therein.

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The motivation to employ the barrier/scavenging layer combinations of Ching in the production of multilayer systems including two or more polyester layers and an oxygen scavenger layer, as taught by the '965 patent, is found at page 3, lines 26-31 of Ching, where reduction in food spoilage is taught.

It is deemed desirable to store and ship food in packaging that reduces spoilage so that the shelf life of the product is enhanced.

6. Claims 1-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 144-148 and 161 of copending Application No. 09/127316 ("the '316 application").

Although the conflicting claims are not identical, they are not patentably distinct from each other because the barrier/scavenger combinations of the '316 application claims suggest the packaging claimed here.

In the absence of convincing objective evidence to the contrary, the use of an outer polyester layer as an abuse layer is deemed conventional.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

7. Applicants' last response contained no arguments.

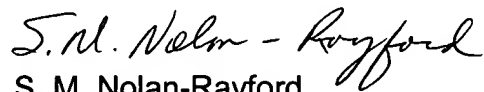
Conclusion

Any inquiry concerning this communication should be addressed to Sandra M. Nolan-Rayford, at telephone number 571/272-1495. She can be reached Monday through Thursday, from 6:30 am to 4:00 pm, ET.

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If attempts to reach the examiner are unsuccessful, contact her supervisor,
Harold Pyon, at 571/272-1498.

The fax number for patent application documents is 703/872-9306.



S. M. Nolan-Rayford
Primary Examiner
Technology Center 1700

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